IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8157 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEENA R MIRCHANDANI

Versus

GENERAL MANAGER

Appearance:

1. Special Civil Application No. 8157 of 1999

MR PK HANDA for Petitioner No. 1

DR MAHESH THAKAR for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 21/01/2004

ORAL JUDGEMENT

It is painful that in such a serious matter of pension of a widow who was aged 66 years on the date of

filing of the petition, i.e. 12.10.1999, 70 year old by now, the petition is filed in a very casual manner, without placing on record the detailed facts, as to what happened after order under challenge-- Annexure 'E' dated 14.08.1999 was passed by the respondent Bank. In order dated 14.08.1999, Annexure 'E' to this petition nothing is stated except the fact that after the husband of the petitioner expired on 09.06.1986, the petitioner was drawing pension from the respondent Bank (Bank of Baroda, Fatehganj Branch). Under the family pension scheme the rate at which the petitioner was paid the pension, was reduced from 1991, but inadvertently it was continued to be paid at the old rate, which resulted into payment of an excess amount of Rs.95,081/-. It is stated in the letter that this amount is to be recovered from the petitioner.

1.1 It is also mentioned in the letter that two sons of the petitioner had visited the Bank and had collected the details, but thereafter they had not turned up. Therefore, the Bank had to remind them twice. However, the sons have not responded to such reminders also; that instead of resolving the dispute, a notice is served through an advocate by the petitioner, alleging harassment on the Bank staff. It is mentioned in the letter that, an undertaking is given by the petitioner to the Bank on 27.06.1990, a copy of which is enclosed.

1.2 However, no such copy is placed on the record of this case. The learned advocate for the petitioner submitted that no such copy was found enclosed with letter dated 14.08.1999. The learned advocate is not able to make available the original copy of letter dated 14.08.1999 for perusal of this Court. It is stated in the letter that the petitioner with two witnesses had undertaken to the Bank to forthwith refund the excess amount credited to the Saving Bank Account of the petitioner. The last two paragraphs of the letter reads thus:

> "In view of the above we request you to refrain from making false allegation and arrange to repay the excess amount immediately as undertaken by you on 27.6.90.
>
> We assure you of our best prompt and sympathetic customer services as is being given to all the public in general and retired old aged pensioners in particular." (emphasis supplied)

2. Today, when the matter is taken up for hearing,

Mr.Handa, the learned advocate without placing anything on record, either by way of moving an application for amendment or otherwise, asserted that after filing of the petition the respondent Bank has stopped the payment of the amount of pension. The petition was though filed on 14.10.1999 was moved for admission hearing on 20.10.1999 only. On that day the matter was ordered to be placed before the appropriate Bench.

2.1 On 22.10.1999 this Court passed the order which reads as under:

> "Notice returnable on 23rd November 1999.
>
> Meanwhile, recovery of the amount shall not be made from the petitioner either by reducing pension which is being paid to the petitioner or from the same account which is being operated with respondents."

Despite this order if the Bank had stopped paying pension to the petitioner it is a clear case of contempt of court because when the court had directed 'not to reduce' the pension stoppage of the full pension is worst. For the reasons best known to the petitioner, the court was not moved, complaining of the same.

2.2 The conduct of the learned advocate is also not upto the mark, much less being satisfactory as is reflected from the orders passed by the Court (Coram: M.R. Calla, J.) on 23.11.1999 and on 06.12.1999, which read as under:

> "None is present on behalf of the petitioner even in the second round. I have heard Dr.Mahesh Thakar appearing on behalf of respondent nos.1 and 2. Having heard Mr.Thakar, this Court is satisfied that Union of India is a necessary and proper party. The petitioner is therefore, directed to implead Union of India as a party respondent. The title of the case as has been given in the index and in the list of events showing that this is a petition against Union of India and others is misleading because in fact Union of India has not been arrayed as party in the body of the petition. Put up on 29.11.1999.
>
> Dt.23.11.1999 (M.R. Calla, J.)"

> "No one is present on behalf of the petitioner. Dr.Mahesh Thakar is present on behalf of respondents nos.1 and 2.

Not only that no one is present today; even on 23.11.1999 no one was present and Dr.Thakar gives out that on 29.11.1999 also the matter was adjourned because nobody appeared on behalf of the petitioner. The order dated 23.11.1999 has not been complied with by the petitioner. In case the order dated 23.11.1999 is not complied with on or before 14.12.1999 appropriate orders with regard to dismissing the petition on the ground of non joinder of necessary and proper parties shall be passed. Put up on 14.12.99.

Dt.6.12.99 (M.R. Calla, J.)"

3. Despite order dated 06.12.1999 whereby order dated 23.11.1999 was to be complied with on or before 14.12.1999, a Civil Application for amendment being Civil Application No.31 of 2000 was filed only on 11.01.2000. This shows the sincerity with which the learned advocate attended the matter of a widowed pensioner. An advocate is supposed to take care of the interest of his client in a diligent manner, but then from the record of the case such diligence is found missing.

4. The learned advocate Mr.Handa has not pointed out any justifiable reason for which the petitioner ought to have waited till the petition reached its turn for final hearing. In fact the facts of the case are such that, an appropriate application for mandatory relief ought to have been filed. As there is no such application filed by the learned advocate on behalf of the petitioner, there is reason for this Court to believe that the assertions made by Mr.Handa, the learned advocate for the petitioner are not genuine.

5. Mr.Handa, the learned advocate without being disturbed by the aforesaid facts submitted that in the interest of justice prayer in clause (iii) be granted, which reads as under:

"(iii) To quash and set aside Anne. 'E' and direct the respondents not to make the recover from the petitioner relying on Shyambabu's case as there is no fault of the petitioner."

This Court does not frequently come across such a casual approach to a matter that too of a widowed lady who is not paid the pension, as stated by the learned advocate at the BAR. The learned advocate has not set out even

the facts of the case in detail. Mr.Handa, the learned advocate read para 8 of the petition wherein it is stated that in view of the provisions of Rule 9, Decision No.1 of the Central Civil Service (Pension) Rules, 1972, there cannot be stoppage of pension for the reasons other than misconduct. Mr.Handa is not able to produce the text of Rule 9 for the perusal. The petition contains the following averments:

> ".. .. it is only possible to recover from the DA of the pension even under Rule 9 right of withholding pension or gratuity lies only with the President provided further at where the part of pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of Rs.375 P.M. which is now a days Rs.1520, ..."

Though it is stated in para 8 that,

> ".. .. It is further pertinent to point out that the family pension has already been reduced by the Bank."

No material to support/ substantiate the aforesaid statement is placed on record. The matter is left in totality to the Court without rendering any meaningful assistance. The learned advocate has not discharged his duty of representing the case of the petitioner.

6. Mr.Handa, the learned advocate relied upon the decision of the Honourable the Apex Court in the matter of Shyam Babu Verma and others Vs. Union of India and others, reported in (1994) 27 Administrative Tribunals Cases 121 and contended that, 'any amount which is paid under a mistake for no fault of the recipient cannot be recovered from the recipient'. But then Mr.Handa has not pointed out the facts of the case and is also not able to show as to in what manner the said decision is applicable to the facts of the present case.

7. Mr.Handa also relied upon a decision of a Division Bench of this Court (Coram: The Hon'ble the Chief Justice Mr.D.M. Dharmadhikari & Mr.Justice P.B. Majmudar) in Letters Patent Appeal No.578 of 2000 in Special Civil Application No.2196 of 1999 dated 4.4.2001. In that case the Court on the basis of the facts of that case was pleased to observe as under:

> "For the reasons aforesaid, we partly allow this appeal. The impugned order dated 25.1.2000

passed by the learned Single Judge is set aside in so far as direction for recovery of excess amount paid to the appellant is concerned. .."

When it was put to Mr.Handa, the learned advocate to elaborate the facts of Special Civil Application No.3909 of 1996, which is referred to in the aforesaid judgement, which was allowed by judgement and order dated 21.10.1996, Mr.Handa showed his inability to do so. Until it is established that the facts of the case on hand are similar to the one which was decided the said decision can have no application. The bold proposition, even contended by Mr.Handa that, 'any amount, paid even under a mistake cannot be recovered from the recipient in any circumstances' cannot be accepted.

8. In view of the aforesaid discussion this petition is dismissed. Rule is discharged. Interim relief is vacated. No order as to costs.

(Ravi R. Tripathi, J.)

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